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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. C80-1858

vs.

THIRD PARTY COMPLAINT

CHEMICAL RECOVERY SYSTEMS, INC.,

Defendant and Third
Party Plaintiff,

vs.

HARSHAW CHEMICAL COMPANY,

Third Party Defendant.

Gary J. McInerney (P-17439)
Attorney for Defendant and
Third Party Plaintiff

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CHEMICAL RECOVERY SYSTEMS, INC.,

Defendant and Third
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vs.

HARSHAW CHEMICAL COMPANY, RUSSELL W.
OBITTS and DOROTHY OBITTS,

Third Party Defendants.

NOW COMES Defendant, Chemical Recovery Systems, Inc.,
by and through its attorneys, Murphy, Burns & McInerney, P.C.,
Suite 4000 Campau Square Building, 180 Monroe, N.W., Grand Rapids,
Michigan 49503, and David C. Long Co., L.P.A., 300 Fourth Street,
P.O. Box 427, Elyria, Ohio 44036, and for its Third Party Com-
plaint against Harshaw Chemical Company states as follows:

1. Chemical Recovery Systems, Inc. is an Ohio corporation
with offices at Elyria, Ohio.

2. Harshaw Chemical is a division of Kewanee Oil Company
and is a corporation licensed to do business in the State of
Ohio and is engaged in doing business at Elyria, Ohio.

3. Harshaw Chemical Company maintains a manufacturing
facility at Elyria, Ohio which has been and is engaged in pro-
ducing chemical products.

4. That Harshaw Chemical Company's Elyria, Ohio property
abuts the northern, eastern and southern boundary of Chemical
Recovery Systems, Inc.'s Elyria property and a substantial

portion of the Harshaw property is bordered by the Black River.

5. That sections of what is now known as 124 Locust Street, Elyria, Ohio, were leased to and used by Harshaw Chemical Company.

6. That Harshaw Chemical Company handled, stored, treated and disposed of chemicals and chemical wastes on said site in violation of Federal law.

7. That such actions of Harshaw Chemical Company were of a nature that could not reasonably have been known to Third Party Plaintiffs.

8. The topography of the present Harshaw site is such that storm water runoff from the area drains through the Chemical Recovery site and enters the Black River and also drains directly into the Black River from the Harshaw site.

9. Storm water falling in an area bordered by East Ave., Pine Street, Locust Street, the St. John Street area, Center Street and Cedar Street is intercepted by a storm sewer system. Flow from impervious areas adjacent to the streets also discharges into the storm sewer. Essentially all of the flow intercepted by the storm sewer system for this area discharges to the storm sewer running under the Chemical Recovery System site and then into the Black River.

10. That at times unknown to Third Party Plaintiff but known to Third Party Defendant, chemicals and hazardous wastes have been spilled onto Harshaw Chemical Company property contaminating the soil and waters into which they seep.

11. That said contaminants from the Harshaw site at times previous to the date of this action and to the present time because of the topography, hydrology and geology of the area and the construction of the sewer system have passed over, under and

through the Chemical Recovery Systems, Inc. site through no fault of Chemical Recovery Systems, Inc., contaminating both the Black River and the Chemical Recovery Systems, Inc. site.

12. For many years, Harshaw has been discharging its effluent into the Elyria sewer system. Due to the design of the sewer, there are overflows into the Black River and consequently, portions of Harshaw's effluents discharged and still discharge into the Black River.

13. Harshaw has been cited by the Environmental Protection Agency for the discharge of metals such as, but not limited to Cadmium, Lead, and Chromium into the soil and water at levels sufficient to adversely affect human health and the environment.

14. That such metals have, due to the topography of the land, the configuration of the sewer system, and the soil conditions migrated to and polluted Chemical Recovery Systems, Inc. property and the Black River near the Chemical Recovery Systems, Inc. site.

15. Harshaw has been cited by the Environmental Protection Agency for the discharge of oil and grease into the soil and water levels sufficient to adversely affect human health and the environment.

16. That the oil and grease, due to the topography of the land, the configuration of the sewer system and the soil condition, have migrated to and polluted Chemical Recovery Systems, Inc. property and the Black River near the Chemical Recovery Systems, Inc. site.

17. That if and to the extent that the property located at 124 Locust Street, Elyria, Ohio and the Black River near said property are presently contaminated, it was a result of the acts and/or omissions of Harshaw Chemical Company.

18. On or about October 7, 1980, Plaintiff, The United States of America, commenced this action against Defendant, Third Party Plaintiff Chemical Recovery Systems, Inc., seeking both equitable relief and monetary damages to wit:

A.1. Immediately remove all barrels, drums, and other chemical waste containers on the bank of the Black River to a point at least thirty (30) feet from the edge of such embankment and in all events to a place where such barrels, drums, and other chemical waste containers are not in danger of falling into the Black River;

2a. Within thirty (30) days of the entry of an order of this Court inventory and label all drums, tanks, and other containers containing chemical wastes on-site in accordance with EPA, Department of Transportation, and Occupational Safety and Health Administration markings and criteria and transfer the contents of any leaking, rusted, or damaged drums or containers into secure containers with linings suitable for the chemicals they are to contain;

2b. Restack all barrels, drums, and other chemical waste containers and ensure that all chemicals and drums on the CRS site are stored in conformance with the National Fire Protection Association Flammable and Combustible Liquids Code (NFPA 30);

3. Immediately cease the receiving of chemical wastes on site until a plan has been formulated by Defendant and approved by EPA for rehabilitation of the site, and for the operation of the solvent reclamation facilities in compliance with applicable federal and state law;

4. Cease, desist, and refrain from operating the solvent recovery stills on the CRS site described in paragraphs 9 and 10 of this Complaint until the stills can be operated in accordance with an EPA approved plan and in a manner which does not present a threat to human health, safety, and the environment. Such plan shall detail repairs to be performed, controls to be installed, a time schedule for implementation of repairs and controls, and operational procedures for continued solvent reclamation activities;

5. Cease from disposing or allowing, suffering or causing the disposal of any hazardous and solid wastes into and upon the ground of Defendant's CRS site and environs;

6. Within thirty (30) days of the entry of an order of this Court complete the existing fence so as to entirely enclose the CRS site;

7. Immediately undertake all measures necessary to provide that all tanks and other bulk storage facilities on the CRS site are installed in accordance with the National Fire Protection Association, Flammable and Combustible Liquids Code (NFPA 30). Conformance with the Code shall be certified to EPA by an independent registered engineer;

8. Within thirty (30) days of the entry of an order of this Court, remove to an EPA approved disposal site, all hazardous waste materials which are not reclaimable or recyclable at the CRS site;

B.1. Determine the nature and extent of contamination of soil and waters, including the Black River, by chemical wastes stored, treated, and disposed of on the CRS site:

(a) Such determination to be made by an independent testing consultant approved by EPA and in accordance with a testing plan approved by EPA.

(b) Such determination to be made within sixty (60) days of the entry of an order of this Court;

2. Formulate and submit to EPA for approval within thirty (30) days of the determination in paragraph B(1), a plan for the removal of contaminated soil from the site, purgation of contaminants, and/or treatment of contaminated soils and waters; and, removal and treatment of chemicals impounded by the boom in the Black River;

3. Initiate the remedial measures of the EPA approved plan within ten (10) days of EPA approval;

4. Complete all remedial measures, including removal, purgation, and/or treatment of contaminated soils and waters, including the Black River, within ninety (90) days;

5. Install and maintain an EPA approved soils and waters monitoring system adequate to evaluate the effectiveness of remedial measures;

6. Report weekly to EPA on the progress of remedial measures.

C. Obtain a performance bond immediately to insure the payment of funds to finance the remedial measures ordered in subparagraphs "A" and "B", the amount of which to be determined in later proceedings.

D. Pay civil penalties of \$10,000 per day for violation of Section 301(a) of the Clean Water act, 33 U.S.C. Section 1311(a).

E. Permit Plaintiff and its agents and contractors to enter and inspect Defendant's property and take samples of soil, waters and chemical wastes at the site and to monitor and observe remedial measures taken by Defendant.

F. Reimburse Plaintiff for all funds expended in taking samples and otherwise investigating, identifying, quantifying, and locating chemical contaminants on and migrating from Defendant's property.

G. Reimburse Plaintiff for the costs of this suit.

H. And that the Court award such other and further relief as the Court deems just and proper.

19. That the quality of Defendant, Third Party Plaintiff's land and waters and the surrounding waters and Third Party Defendant's acts were of a nature that could not reasonably have been known to Defendant, Third Party Plaintiff prior to

Plaintiff's investigation of this land.

20. That as a result of the actions and omissions of Third Party Defendant, the Third Party Plaintiff is entitled to be indemnified by the Third Party Defendant against any and all lawsuits, costs and expenses, including attorney fees, incurred by Third Party Plaintiff in connection with this action or its ownership of said property.

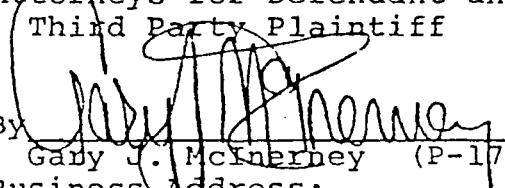
RELIEF REQUESTED

WHEREFORE, Third Party Plaintiff prays that this Court grant the following relief:

1. Enter a Judgment for damages against Harshaw Chemical Company for whatever amount Chemical Recovery Systems, Inc. is found to be entitled.
2. Issue a mandatory permanent injunction requiring Harshaw Chemical Company to take whatever measures are necessary to remove any and all chemical wastes from the site, and to remove all materials, soils and sediments in and around the site contaminated by their wastes, to do all things necessary to restore the site to its condition prior to the storage and disposal of the wastes mentioned herein, and to perform all acts sought by Plaintiff to be performed by Chemical Recovery Systems, Inc.

DATED: February 24, 1981

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By 
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